

**REMARKS**

In response to the Election/Restrictions requirement in the Office Action dated May 2, 2003, Applicant hereby elects Species 1 (see Figure 1), upon which it is believed that claims 1, 2, 4, 5, and 15-27 read upon, claim 25 is generic. This election is made contingent upon the clarification below that the species analysis of the Office Action is inconsistent with the analysis described in MPEP § 806.04, as explained below. If the Examiner disagrees with Applicant's analysis below, then Applicant respectfully requests that the Examiner communicate with the Applicant's representative as listed at the end of this Amendment, in order to re-evaluate the election, if necessary.

Claims 1, 2, 4, 5, and 14-27 are all of the claims pending in the present Application. New claims 25-27 are added, including generic claim 25.

Attached hereto is an Excess Claims Fee letter and fee for one excess independent claim.

In the Office Action dated May 2, 2003, the Examiner has imposed an Election Requirement that Applicant select only one species. As best understood, the Examiner considers that there are three species represented by the claims, each defined by the Examiner as being a "patentably distinct species".

Although Applicant does not dispute that these three categories are indeed patentably distinct, Applicant respectfully submits that the Examiner incorrectly applies the evaluation of species for purpose of restriction/election.

That is, according to MPEP § 806.04(e), "Claims are definitions of inventions. *Claims are never species.... Species are always the specifically different embodiments.*" (Emphasis in MPEP)

Applicant, therefore, respectfully submits that the analysis in the Office Action is inconsistent with the above definition from the MPEP in asserting that three species are represented by the claims, when in reality, it would seem that only two embodiments are described (see Figure 1 and Figure 7) in the disclosure.

Applicant further respectfully submits, contrary to the Examiner's characterization,

that claims 1, 2, 4, 5, and 15-24 read on Species 1 (Figure 1) and that claim 14 reads on Species 2. Although it is not settled as a matter of law as to how many embodiments are "reasonable" (i.e., whether two species are reasonable), Applicant has rendered the question moot by adding a new claim 25, which is generic to both Figure 1 and Figure 7.

Applicant respectfully submits that new claim 25 is generic and that, therefore, claims 25 and 26 additionally read on Species 1 (Figure 1) and that claims 25 and 27 additionally read on Species 2 (Figure 7).

With the above clarification and correction of the analysis in the Office Action, Applicant elects Species 1 (represented by Figure 1), upon which species at least claims 1, 2, 4, 5, and 15-27 read upon. Applicant reserves the right to rejoin Species 2, should generic claim 25 ultimately be allowable and reserves the right to modify the election should the Examiner not agree with Applicant's species analysis.

It is noted that the claim amendments herein are intended solely to more particularly point out the present invention for the Examiner, and not for distinguishing over the prior art or the statutory requirements directed to patentability. It is further noted that, notwithstanding any claim amendments made herein, Applicant's intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

#### **FORMAL MATTERS AND CONCLUSION**

In view of the foregoing, Applicant submits that claims 1, 2, 4, 5, and 14-27, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

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The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

Date: \_\_\_\_\_

6/2/03



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